

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MARGARET DARR,

Plaintiff,

v.

Case No.: 1:18-cv-00672-GBW-SCY

NEW MEXICO DEPARTMENT
OF GAME AND FISH,

Defendant.

DEFENDANT NEW MEXICO DEPARTMENT OF GAME AND FISH'S
MOTION TO DISMISS COUNT II OF THE COMPLAINT

Defendant New Mexico Department of Game and Fish, (“NMDGF”), moves this Court for its Order under Rule 12(B)(1) and 12(B)(6) of the Federal Rules of Civil Procedure dismissing the Fair Pay for Women Act claim against the State as an employer because the Act does not contain an express waiver of sovereign immunity from suit for money damages.

As grounds for this Motion, Defendant DGF states:

1. This suit includes a claim for money damages for violation of the Fair Pay for Women Act, set forth in COUNT II of the Complaint, §44-4-1, et seq. NMSA 1978.
2. Defendant NMDGF is an agency of the State of New Mexico and, as such, is entitled to sovereign immunity from suit unless there has been an express waiver of sovereign immunity.
3. The New Mexico Fair Pay for Women Act contains no express waiver of sovereign immunity and, therefore, the State as an employer is not liable to Plaintiff under this law; as more fully set forth and argued in Defendant’s Memorandum in Support of Motion to Dismiss Under Count II of the Complaint, filed simultaneously with this Motion.

4. This legal issue is currently pending before the New Mexico Court of Appeals in two related, but not consolidated, appeals captioned *Alisha Tafoya Lucero v. New Mexico Corrections Department*, Ct. App. No. 35,438, from Dist.Ct. No. D-101-CV-2013-03206 and *Melinda L. Wolinsky v. New Mexico Corrections Department*, Ct. App. No. 35,762, from Dist.Ct. No. D-0101-CV-2016-01005. The appeals are fully briefed. Oral argument was held on May 15, 2018. The Court of Appeals panel, *sua sponte*, asked the parties to submit supplemental briefing which was completed on June 18, 2018.

5. Due to the nature of the Motion, Defendant did not seek Plaintiff's concurrence.

WHEREFORE, Defendant Department of Game and Fish moves this Court for its Order dismissing COUNT II of Plaintiff's Complaint and for such other and further relief as the Court deems proper under the circumstances.

Respectfully submitted,

MILLER STRATVERT P.A.

By: /s/ Paula G. Maynes
Paula G. Maynes
Stephen M. Williams
Attorneys for Defendant
200 West DeVargas, Suite 9
Santa Fe, New Mexico 87501
Telephone: (505) 989-9614
Email pmaynes@mstlaw.com
swilliams@mstlaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed through the CM/ECF system which caused all counsel of record to be served by electronic means on this 30th day of July 2018:

Diane Garrity
Serra & Garrity, P.C.
1331 Seville Road
Santa Fe, New Mexico 87505
(505) 983-6956
(505) 4704803 *m*
dgarrity@sgmnmlaw.com
Attorneys for Plaintiff

Rosario D. Vega Lynn
Vega Lynn Law Offices, LLC
P.O. Box 65513
Albuquerque, NM 87193
(505) 903.9411
rosariovegallynnlawfirm@outlook.com
Attorneys for Plaintiff

/s/ Paula G. Maynes
Paula G. Maynes

\\abq-tamarack\prodata\006352-049606\pleadings_federal\3499893.docx